

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EFRAIN MARTINEZ, *individually and on behalf of
himself and all other persons similarly situated*, and
LEOVIGILDO VASQUEZ,
:

Plaintiffs,
:

-against-
:

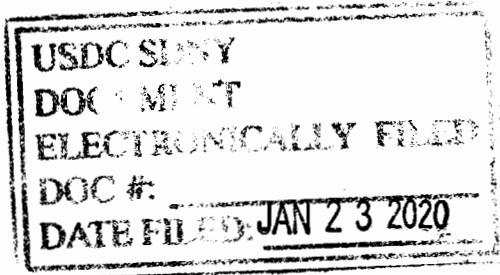
2009 BAMKP CORP., *d/b/a La Antillana*; ST
NICHOLAS JM DELI GROCERY, INC., *d/b/a La
Antillana*; and PABLO PEGUERO,
:

Defendants.
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GEORGE B. DANIELS, United States District Judge:

Plaintiff Efrain Martinez commenced this action on August 15, 2018 against Defendants 2009 Bamkp Corp., St. Nicholas JM Deli Grocery, Inc., and Pablo Peguero for violations of the Fair Labor Standards Act and New York Labor Law. (Compl., ECF No. 1.) Shortly thereafter, on September 5, 2018, Plaintiff Leovigildo Vasquez filed a consent to sue. (Consent to Sue, ECF No. 10.) On June 5, 2019, Plaintiffs filed a motion for default judgment against Defendants. (Decl. of David Stein, Esq. in Supp. of Mot. for Default J., ECF No. 36; Mem. of Law in Supp. of Mot. for Default J., ECF No. 37.) Defendants did not file a response to Plaintiff's submissions. Subsequently, on June 20, 2019, this Court referred the matter to Magistrate Judge Kevin N. Fox for general pretrial supervision, as well as to report and recommend on any dispositive motions. (Order of Reference, ECF No. 38.)

Before this Court is Magistrate Judge Fox's December 10, 2019 Report and Recommendation (the "Report"), recommending that Plaintiffs' motion for default judgment against Defendants be granted, and that Plaintiffs be awarded damages and attorneys' fees and costs. (Report, ECF No. 41, at 10-11.) In the Report, Magistrate Judge Fox advised the parties



MEMORANDUM DECISION
AND ORDER

18 Civ. 7414 (GBD) (KNF)

that failure to file timely objections would constitute a waiver of those objections on appeal. (*Id.* at 11.) No objections have been filed. Having reviewed the Report for clear error and finding none, this Court ADOPTS the Report in full.

I. LEGAL STANDARD

A court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth in a magistrate judge’s report. 28 U.S.C. § 636(b)(1)(C). Portions of a magistrate judge’s report to which no or “merely perfunctory” objections have been made are reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present only when “upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed.” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

II. DEFAULT JUDGMENT AGAINST DEFENDANTS IS GRANTED

Magistrate Judge Fox correctly found that Plaintiffs’ motion for default judgment should be granted given that Plaintiffs have satisfied all of the prerequisites to default judgment. Accordingly, this Court directs the entry of default judgment in favor of Plaintiffs and against Defendants.

III. THE REPORT CORRECTLY CALCULATES PLAINTIFFS’ DAMAGES AND ATTORNEYS’ FEES AND COSTS

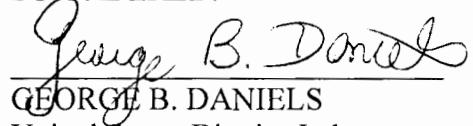
Magistrate Judge Fox conducted a comprehensive and careful inquest and issued the Report recommending that this Court award damages as specified in the Report. (Report at 10–11.) This Court has reviewed the Report, and finds no error, clear or otherwise. Accordingly, this Court adopts Magistrate Judge Fox’s recommended judgment regarding damages and attorneys’ fees and costs for the reasons stated in the Report.

IV. CONCLUSION

Magistrate Judge Fox's Report, (ECF No. 41), is ADOPTED. Defendants are ordered to pay Martinez \$160,656.99 in damages, Vasquez \$137,463.12 in damages, and Plaintiffs \$9,228 in attorneys' fees and costs.

Dated: New York, New York
January 23, 2020

SO ORDERED.


GEORGE B. DANIELS
United States District Judge